

City of Milloughby Hills

Interoffice Memo

Date: Monday, April 10, 2017

To: Council President Nancy Fellows, Council Clerk Savage and Council Members

From: Robert M. Weger, Mayor/Safety Director

Subject: Further Clarification on Veto of Ordinance 2017-11

Per Council's request for further explanation of my veto on the above Ordinance, I offer the following:

1. Council's disregard for Law Director Lobe's legal opinion at the 3/9/17 Council meeting (prior to Ordinance passage) (previously provided as Exhibit 1) in which he asked that Council consider meeting with the Civil Service Commission to discuss their concerns, as noted in the letter provided to him dated 2/8/17 (previously provided as Exhibit 2).
 - At Council's Working Committee of Council meeting of 2/9/17, Council President Fellows indicated that Council was going "to wait for some comments from Mr. Majeski who is Chair of the Civil Service Commission aligned with medical examinations and background checks."

At the Council meeting of 2/23/17, in "Legislation", "we did determine that it would stay on the 3rd reading as we were waiting for some suggestions and thoughts from Tom Majeski and the Civil Service Commission. I think it was specifically to drug testing and background checks." **Why did Council not follow through with their plan? They never received the information about drug testing and background checks.**
2. Councilwoman and Charter Review Committee member Jennifer Greer's comments regarding her discussions with attorney and CRC Chairman Andy Gardner were relevant and never heard by Council. These concerns had to do with doing this in the form of an ordinance (which would have to be maintained for amendments) versus a policy, creating a framework for hiring, the usurping of powers provided in the Charter (voted by our residents), and HIPPA concerns. **Why couldn't Council give them an opportunity to discuss these concerns?**

3. Law Director Lobe shared a letter dated 2/8/17 from Civil Service Commission regarding concerns, as listed above. It was understood by Mayor Weger, Law Director Lobe and all three members of the Civil Service Commission that Councilwoman Janet Majka would be disseminating this information to Council prior to voting on this Ordinance. This understanding is clearly documented in the Civil Service meeting minutes of 2/23/17. **Why was this information withheld from Council members?**
4. Council never considered verbal or written communication by resident Ed McKenna. **Why not?**
5. Finally, I have redlined the Ordinance, indicating my concerns with this ordinance line by line, as Councilman Fiebig has requested. It is still my opinion that this should not be in the form of an ordinance, but rather in a type of checklist protocol, similar to the Civil Service Employment Checklist that is very complete and has worked well with the last two hires.

ORDINANCE NO. 2017-11

AN ORDINANCE ESTABLISHING THE TERMS AND CONDITIONS REQUIRED FOR THE CONFIRMATION OF MAYOR APPOINTMENTS OF THE HEADS OF ALL THE DEPARTMENTS OF THE MUNICIPALITY.

WHEREAS, specifically relating to the duty and responsibility to appoint the heads of all Departments of the Municipality, Charter Section 2.21 – Appointments to Office and Removals from Office, provides that the Mayor shall appoint the heads of all Departments of the Municipality, including but not limited to the Department of Law, Department of Finance, Department of Public Safety, Police Department, Fire Department, Department of Public Service, the City Engineer, the Road Supervisor, Recreation Coordinator, City Prosecutor and Building Commissioner, subject to confirmation of such appointment by an affirmative vote of four (4) or more members of Council...; and

WHEREAS, on November 3, 2015 the electors of the City of Willoughby Hills charged the Civil Service Commission with the following responsibility: The Commission shall, prior to an employment offer by the appointing authority, review and confirm all credentials stated in the application provided by the candidate for employment by the Municipality, including, without limitation: (i) reviewing and confirming that the employment and educational history of any candidate is correct as stated in such candidate's employment application, and (ii) that such candidate has obtained and is maintain in full force any license, certification or other qualification required by the Municipality for employment by the Municipality in the position sought by such candidate; and

WHEREAS, **Charter Section 3.31 – Powers** provides that the Council shall enact any and all legislation deemed necessary for the preservation of the safety and welfare of the community and provide for the orderly and desirable growth of the community for the efficient and orderly operation of the local government; and

WHEREAS, City Council deems this ordinance to be necessary in order to fulfill its duty and responsibility prescribed in Charter Section 3.31, but more importantly to reduce hiring error in key public positions.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. In accordance with Charter Section 2.21, the Mayor shall appoint the heads of all Departments of the Municipality, subject to confirmation of such appointment by an affirmative vote of four (4) or more members of Council. This ordinance hereby states the terms and conditions required before such conformation can be made.

CONFIRMATION OF ALL CREDENTIALS The Civil Service Commission shall, prior to an employment offer by the appointing authority, review and confirm all credentials stated in the application provided by the candidate for employment by the Municipality, including, without limitation: (i) reviewing and confirming that the employment and educational history of any candidate is correct as stated in such candidate's employment application, and (ii) that such candidate has obtained and is maintain~~ing~~ in full force any license, certification or other qualification required by the Municipality for employment by the Municipality in the position sought by such candidate.

A report of the Commission's findings must be submitted to and shall be reviewed by Council before confirmation of a Mayor's appointment can be made. As this provision is a Charter requirement, it cannot be waived. **This conflicts with Charter provision 5.52 – “The Commission shall report its proceedings to the Mayor or Council upon request and shall make a report to the Mayor...” It is Civil Service Commission's policy to give their report to the Appointing Authority (Mayor).**

BACKGROUND INVESTIGATION

All candidates are subject to a complete background investigation including, but not limited to: a review of available **court**, driving, and employment records. **A criminal background check, covering all addresses for the last 10 years, will be conducted during the application process. A verification of the criminal background record will be made and its contents subject to approval by Council prior to offer of employment. This requirement shall not be waived.**

“Court” records could create a disparity in hiring. For example, if an applicant is found to have something on their records, what guidelines is Council using to hire or deny employment. It appears to be too subjective.

“A criminal background check, covering all addresses for the last 10 years” seems to be a duplication of the BCI check, where Back Track includes any incident after the age of 18, rather than by applicant’s address.”

“verification of the criminal background record will be made and its contents shall be provided to Council...” If the person has a criminal history, he would not be considered for hiring in the first place. By the time Council gets this, Civil Service would have already recommended not hiring the individual based on this finding.

MEDICAL EXAMINATION

Employment as a Police Chief and/or Fire Chief is contingent upon successful results of a **thorough medical examination**, including drug screening and psychological testing conducted/scheduled by the City. Result of said testing shall be provided to Council prior to offer of employment. This requirement shall not be waived.

- 1) What constitutes a “thorough” medical examination?
- 2) Unclassified positions (such as Police Chief and Fire Chief) may or may not be in the Police & Fire Pension Systems which require a physical examination. If they are in PERS, a physical examination is not required. In that case, the City would have to set guidelines, under Civil Service Commission protocol (to prevent disparity), as to what is to be done and who is to provide the services. The City would incur the expenses for this.
- 3) What are the preclusions if you find something? Seems too subjective.
- 4) Psychological examination and possibly even drug test (if something is found, such as a prescribed opiate) results may constitute portions of a medical records and violates federal HIPPA rules.

HIRING OF RELATIVES

No person shall be employed, promoted, demoted, transferred, or otherwise appointed to a position supervised directly by a relative. Department heads may make transfers or reassignments when possible, that will allow the appointment to take place but avoid supervision or other situation where influence over a **relative’s** employment conditions could be exercised.

This violates our Charter, which mirrors Ohio Ethics policy:

Summary of the Law (found in ORC Chapter 102 and Sections 2921.42 and 2921.43):

The Ohio Ethics Law and related statutes prohibit an official from:

- Authorizing the employment of a family member; and
- Using the authority or influence of her public position to secure authorization of the employment of a family member.

An official is prohibited from hiring a family member in any employment position, including a FT, PT or temporary or permanent position, a position in the classified or unclassified civil service, or a non-civil service position.

In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency, as long as no official has secured a job, or job-related benefits, for her family member.

NOTE: The key to the Ohio Ethics Law is that the official cannot authorize the employment of a family member or use their authority or influence to secure the employment for a family member!

No person serving as evaluator of applicants for employment (interviewer, selection panel member, assessor, etc.) may be a relative of any applicant for that position. This requirement shall not be waived.

Definition of Relative as defined by R.C. 2921.42 (A)(1) includes the following relatives, regardless of where they reside: (1) spouse; (2) children (whether dependent or not); (3) siblings; (4) parents; (5) grandparents; and (6) grandchildren. It also includes any other person related by blood or by marriage and living in the same household.

FALSIFICATION OF AN APPLICATION

Falsification, misrepresentation or omission of any information on an application (including any supplemental questionnaire), resume, or any other materials, or during any interviews, **will** be justification for withdrawing any offer of employment or, if employed, termination from employment, regardless when the falsification, misrepresentation or omission is discovered by the City.

- 1) The word “will” is too stern, as it relates to an “omission.” What if an applicant omits something that is not pertinent to the hiring (i.e. working at a non-related job if they were only employed for a few days, or something on the order of that type of insignificance,
- 2) The words “in accordance with Civil Service Rules and Regulations” needs to be included at the end of this line. As per Charter 5.52 “Neither the general laws of the State of Ohio nor any other provision of this Charter shall impair or limit the authority conferred in this section.

SECTION 2. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 3.

This Ordinance shall be in full force and take effect at the earliest time permitted by law. PASSED:

_____, 2017 _____ Nancy E. Fellows President of Council

Submitted to the Mayor for his approval

on this _____ day of _____, 2017

Approved by the Mayor

_____, 2017

ATTEST:

Victoria Ann Savage, CMC
Clerk of Council

Robert M. Weger, Mayor